Supreme Court, U.S.
FILED

96 709 NOV 4 1996

OFFICE OF THE CLERK

No. _____

IN THE
SUPREME COURT OF THE UNITED STATES

October Term 1996

IN THE MATTER OF:

PHIL KAUBLE, ET AL.,

Plaintiffs - Petitioners

v.

UNION EMPLOYEE DISCRETIONARY TRUST,

Defendant - Respondent.

Petition for Writ of Certiorari

PRO SE PETITIONERS

PHIL KAUBLE
1024 S. McCann St.
Kokomo, IN 46902
1-317-542-6538

BOB ANDREWS
1561 N. 1050 W.
Kokomo, IN 46902
1-317-566-3657

I.D. BREDEN, SR.
2604 E. Boulevard
Kokomo, IN 46902
1-317-452-0968

WADE KAUBLE
5713 Treaty Lane
Kokomo, IN 46902
1-317-4530443

12pp

QUESTION PRESENTED FOR REVIEW

Can a U.S. Bankruptcy Court award general awards for fees and compensation to intervenors in a bankruptcy case from the largess of the bankrupt estate?

LIST OF PARTIES

Plaintiffs - Petitioners:

Bob Andrews
1561 N. 1050 W. Co. Rd.
Kokomo, Indiana 46902
Tel: (317) 566-3657

I.D. Breeden, Sr.
2604 East Boulevard
Kokomo, Indiana 46902
Tel: (317) 452-0968

Phil Kauble
1024 South McCann Street
Kokomo, Indiana 46902
Tel: (317) 452-6538

Wade Kauble
5713 Treaty Lane
Kokomo, Indiana 46902
Tel: (317) 453-0443

Defendant - Respondent:

Union Employee Discretionary Trust Fund
By Counsel
John Wood, Esq.
4811 North Park Avenue
Indianapolis, Indiana 46205

TABLE OF CONTENTS

	Page
Question Presented For Review	i
List of Parties	ii
Table of Contents	iii
Table of Authorities	iv
Rules and Statutes	v - vi
Opinions Below	1
Jurisdiction	2
Rules Involved	3 - 6
Statement of Case	6 - 12
Reasons Why This Petition For Writ of Certiorari Should Be Granted	12-24
Conclusion	24-26
Precise Relief Requested	27

TABLE OF AUTHORITIES

Cases:	Page
Allied Chemical & Alkali Workers, Local 1 vs. Pittsburgh Plate Glass Co., 404 U.S. 157, 30 L.Ed.2d 341, 92 S. Ct. 383 (1971)	16, 17, 21
Barceloux, 74 F.2d 288 (9th Cir.-)	18
Boggess vs. Hogan, 410 F.Supp. 433 (D.C. N.D. Ill.-1975)	22
Booth vs. Prince George's County, 66 F.D.R. 466 (D.C. Md.-1975)	22
In Re: Celotex Co., 13 F.Supp. 1011 (District Court-Del.)	13, 14
Fletcher vs. Peck, 6 Cranch 87 ( )	21
In the Matter of Lytton's Appeal of Cluett, Peabody and Company, 832 F.2d 395, 399-402 (7th Cir.-1987)	18
Michel & Lazarus vs. Prentice, 234 U.S. 263, 58 L.Ed. 1305, 34 S.Ct. 851 (1914)	18

Statutes and Rules:	Page
11 U.S.C. §330	15
11 U.S.C. §501	15
11 U.S.C. §502	15
11 U.S.C. §507	15
11 U.S.C. §726	14
11 U.S.C. § 726(1)	14
28 U.S.C. §1252(1)	2
Rule 23 Fed. R. Civ. P.	8
Rule 23(e) Fed. R. Civ. P.	22
Section §101(14) Bkr Code	6
Section §503 Bkr Code	6
Section §901 Bkr Code	5
Section §1109 Bkr Code	4
Section §1164 Bkr Code	4 - 5
Rule 2016 Bkr Code	15
Rule 2018 Bkr Code	3, 12, 13
Rule 3001 et seq.	15
Rule 7001 et seq.	8

Rule 7024 5

Chapter III Rule 8-210 ..... 4, 6

Chapter X Rule 10-210 ..... 4, 6

Advisory Committee Notes 4

Bankruptcy Reform Act 1978 25

OPINIONS BELOW

The opinion of the of the United States Court of Appeals for the Seventh Circuit is unreported and unpublished, which is reproduced in the Appendix attached hereto. Appendix, pages 1-3. The opinion of the U.S. District Court for the Southern District of Indiana referenced in the opinion of the U.S. Seventh Circuit Court of Appeals is unreported and unpublished and is reproduced in the Appendix attached hereto. Appendix, pages 4-16. The opinion of the U.S. Bankruptcy Court for the Southern District of Indiana is reproduced in the Appendix attached hereto at pages 17-25. References to the Appendix are hereafter cited as "App. _____".

JURISDICTION

The opinion of the Court of Appeals was decided on August 14, 1996. App. 1. No petition for rehearing was filed. This petition for writ of certiorari is timely filed. The jurisdiction of this Court is invoked under 28 U.S.C. §1252(1).

RULES INVOLVED

RULE 2018

INTERVENTION; RIGHT TO BE HEARD

(a) Permissive Intervention. In a case under the Code, after hearing on such notices as the court directs and for cause shown, the court may permit any interested entity to intervene generally or with respect to any specific matter.

(b) Intervention by Attorney General or a State. In a chapter 7, 11, or 13 case, the Attorney General of a State may appear and be heard on behalf of consumer creditors if the court determines the appearance is in the public interest, but the Attorney General may not appeal from any judgment, order, or decree in the case.

(c) Chapter 9 Municipality Case. The Secretary of the Treasury may, or if requested by the court shall, intervene in a chapter 9 case. Representatives of

the state in which the debtor is located may intervene in a chapter 9 case with respect to matter specified by the court.

(d) Labor Unions. In a chapter 9 or 11 case, a labor union or employees' association, representative of employees of the debtor, shall have the right to be heard on the economic soundness of a plan affecting the interests of the employees but it may not appeal from any judgment, order, or decree in the case unless otherwise permitted by law.

(e) Service on Entities Covered by This Rule. The court may enter orders governing the service of notice and papers on entities permitted to intervene or be heard pursuant to this rule.

Advisory Committee Note

This rule is derived from Rules 8-210, 9-15 and 10-210 and it implements §§1109 and 1164 of the Code.

Pursuant to §1109 of the Code,

parties in interest have a right to be heard and the Securities and Exchange Commission may raise and be heard on any issue but may not take an appeal. That section is applicable in chapter 9 cases (§901 of the Code and in chapter 11 cases, including cases under subchapter IV thereof for the reorganization of a railroad.

In a railroad reorganization case under subchapter IV of chapter 11, §1164 also gives the right to be heard to the Interstate Commerce Commission, the Department of Transportation and any state or local regulatory commission with jurisdiction over the debtor, but these entities may not appeal.

This rule does not apply in adversary proceedings. For intervention in adversary proceedings, see Rule 7024. The rules do not provide any right of compensation to or reimbursement of

expenses for intervenors or others covered by this rule. Section 503(b)(3)(D) and (4) is not applicable to the entities covered by this rule.

Subdivision (a) is derived from former Chapter III Rule 8-210 and former Chapter X Rule 10-210. It permits intervention of an entity (see §101(14), (21) of the Code) not otherwise entitled to do so under the Code or this rule. Such a party seeking to intervene must show cause therefor.

STATEMENT OF THE CASE

On November 25, 1985 Continental Steel Corporation filed a Chapter 11 bankruptcy petition. App. 4. The Appellants here were represented by the United Steelworkers of America ("the Union") as their exclusive bargaining agent while they were employed by Continental Steel. Id. The Union intervened in this action about a week before

the case was converted to a Chapter 7, liquidation. Id.

After several years of negotiation, a number of major players in the Continental Steel bankruptcy - the bankruptcy trustee, the creditors of the estate, and the attorneys for the Union - arrived at a Settlement Agreement resolving the disputes between the players. Id. App. 5. In January, 1988, the bankruptcy trustee moved the bankruptcy court to approve the Settlement Agreement. The Settlement Agreement provided that the interest earned on Five Million and Five Hundred Thousand Dollars ($5,500,000.00) would be set aside and separately accounted for and eventually be paid to various employee trust funds. See, Notice to Former Employees and SUMMARY OF SETTLEMENT AGREEMENT. App. 26-34. This money would be available to pay expenses of auditing medical claims and other

expenses and to add to the amounts distributable to former employees. App. 32 at ¶7.

After the bankruptcy trustee filed the motion to approve the settlement agreement, the bankruptcy trustee filed an adversary proceeding Complaint pursuant to Rule 7001, et seq. of the Bankruptcy Rules of Procedure naming Timothy J. Cheek as class defendant representing the class of former union employees. App. 5-6. Timothy J. Cheek was represented by the attorneys for the Union. After service of process on Cheek, by service to his attorneys, the Bankruptcy Court recognized all former employees of Continental Steel Corporation as a Class as defined by Rule 23 of the Federal Rules of Civil Procedure and "certified" the class with a finding that the attorneys for the Union were competent

and could fully and adequately represent the class. App. 27 at ¶2.

A notice was sent out to all former employees with a summary of the settlement agreement and a hearing was held in April, 1988. App. 6.

The bankruptcy judge overruled the objections to the settlement of the adversary proceeding on grounds that the Settlement Agreement in the Chapter 7 case was fair and equitable to the members of the class. App. 6-7. The Bankruptcy Court also held that the "Union adequately represented the former employees" in resolving claims arising from the collective bargaining agreements between the Union and Continental Steel. App. 7. On April 20, 1988, the Bankruptcy Court approved the Settlement Agreement.

From April, 1988, until August, 1994, the Union Employee Discretionary Trust

received approximately $1,500,000.00 in interest from the $5,500,000.00 set aside for the former employee claims pursuant to the Settlement Agreement. From this, $572,000.00 was paid out of the Trust in medical claims of the former employees, leaving approximately $928,000.00 in the Union Employee Discretionary Trust.

On August 8, 1994, the Trustees of the Union Employee Discretionary Trust ("the Trust") filed an Application for approval of expenses relating to processing medical claims, for reimbursement to the United Steelworkers of America and for distribution of the remaining balance to Trust beneficiaries. The Application asked for $52,000.00 for Carla Sullivan, an employee of the Union's attorneys, $75,000.00 in accounting expenses, $7,700.00 in legal expenses, $25,000.00 in prospective legal expenses in winding up the Trust, and for authority to dis-

tribute to Trust beneficiaries the remaining balance in the Trust.

The Petitioners herein, Phil Kauble, et al, filed objections to the Application by the Trustees of the Trust. The objections were overruled by the Bankruptcy Court on September 30, 1994. App. 22-23. The Bankruptcy Court approved the requested reimbursement of expenses. App. 23. The Bankruptcy Court authorized the Trust to pay any additional expenses or reimbursements as approved by the Trustees of the Trust in their discretion without further approval of the Court. App. 24. The Bankruptcy Court ruled that the Trust is not required to file a copy of its final accounting with the Court or to obtain a further order approving disbursement of its remaining funds, $619,391.97. App. 24-25.

The Petitioners appealed the Bankruptcy Court's approval of the Trust's

Application for reimbursement of expenses to the U.S. District Court. App. 4-16. The District Court affirmed the decision of the Bankruptcy Court. App. 16. The Petitioners appealed the decision of the District Court to the U.S. Court of Appeals for the Seventh Circuit which affirmed the District's Court's ruling for the reasons stated by the District Court. App. 1-3. The Petitioners now petition this U.S. Supreme Court for writ of certiorari.

REASONS WHY THIS PETITION FOR WRIT OF CERTIORARI SHOULD BE GRANTED

I. The Establishment of a Trust From the Proceeds of the Bankrupt Estate is not an Important Reason to Allow Evasion of the Bankruptcy Code.

The Union was an intervenor in a bankruptcy case pursuant to Rule 2018 of the Bankruptcy Rules of Procedure. App.

5 and App. 18. As stated in the Advisory Committee Note to Rule 2018, "the rules do not provide any right of compensation to or reimbursement of expenses for intervenors or others covered by this rule." This statement is plain with a plain meaning.

The District Court confirmed that this is exactly what the Advisory Committee Note states. App. 11-12. Nonetheless, the District Court found Petitioners' reliance on the rules flawed for several reasons. App. 12-16. Id. The District Court stated, "Most importantly, the Union is not receiving funds from the bankruptcy estate, but instead from the Trust." App. 12.

However, all the funds in the Trust are direct proceeds from the bankrupt estate. It is impermissible to use a "shell" to do what is expressly prohibited by law. In Re: Celotex Co.,

13 F.Supp. 1011 (District Court-Del.) Here, the District Court finds a most important reason in the avoidance of the rules, the fact that a "shell" was created, the Union Employee Discretionary Trust, to do what is prohibited by law, to wit, the reimbursement and awards of compensation to an intervenor in a bankruptcy case.

Petitioners' second objection to the Application of the Trust and their second argument on appeal was not entirely clear to the District Court. App. 13. However, the law is quit clear as to the procedure for disbursements from a bankrupt estate.

The scheme and intent of the U.S. Bankruptcy Code is plain. The distribution of property of an estate "shall" be made as provided by 11 U.S.C. §726. If the entitlement to property of the estate is for administrative expenses as provided by 11 U.S.C. §726(1) and 11

U.S.C. §507, there needs to be an application for compensation or reimbursement pursuant to 11 U.S.C. §330 with an itemized and detailed statement as required by Rule 2016 of the Bankruptcy Rules. If the entitlement is for a claim against the estate, it has to be a claim as defined by 11 U.S.C. §§501, 502 and Rule 3001, et seq., of the Bankruptcy Rules.

In the normal operation of the Bankruptcy Code, every penny of the bankrupt estate, and the rightful entitlement of the recipients of the property, is accounted for in the public record of the bankrupt estate. Nothing like that here. Instead, the Bankruptcy Court authorized $619,391.97 to be distributed by the Trust in the discretion of the Trustees without further necessity of public record or court approval. App. 24-25.

Again, the Bankruptcy Court is using

the "shell" of the Union Employee Discretionary Trust to do things that are prohibited by law. An order of a bankruptcy court authorizing a bankruptcy trustee to make disbursements from the bankrupt estate within his discretion, without court approval or public scrutiny, and with blind faith that all parties holding money have "duties to clients, to beneficiaries and the courts" [App. 14] is a far departure from the laws which defeat the purpose of the Bankruptcy Code. And yet, that is exactly what we have here with the creation of the Union Employee Discretionary Trust two years after the employer closed to distribute the proceeds of the bankrupt estate in the discretion of the Trust's trustees that were appointed by the Union who legally represented no one in the action two years after the employer closed. Allied

Chemical & Alkali Workers, Local 1 vs. Pittsburgh Plate Glass Co., 404 U.S. 157, 30 L.Ed.2d 341, 92 S.Ct. 383 (1971). App. 37. Absent a specific contractual provision, labor unions do not represent former employees and retirees. There was no contractual provision anywhere that permitted the Union to continue representing the former Continental employees under the National Labor Relations Act or any other law during the Chapter 7 case. Allied Chemical, supra. In sum, there is absolutely nothing showing how the Union retained for over two years the right to be involved in the Continental bankruptcy to become a beneficiary of the Trust the Union created without authority. passim.

Petitioners' final argument on appeal was that the Settlement Agreement did not bar Petitioners from making an objection to the Application of the Trust for compensation, reimbursement and distribu-

tion. App. 16. In the opinion of the Bankruptcy Court and the District Court, the objections of the Petitioners herein raise "a number of issues that should have been appealed long ago." App. 10. In other words, the issue of compensation and reimbursement of the Union were raised in the Settlement Agreement in 1988 and the Petitioners are barred from relitigating the issue now. App. 6-7 and App. 20.

However, it is well settled law that any application for compensation or reimbursement in a bankruptcy court is a "final" decision that can be appealed. Michel & Lazarus vs. Prentice, 234 U.S. 263, 58 L.Ed. 1305, 34 S.Ct. 851 (1914); In the Matter of Lytton's Appeal of Cluett, Peabody and Company, 832 F.2d. 395, 399-402 (7th Cir.-1987); In Re: Barceloux, 74 F.2d 288 (9th Cir.-). Thus, the opinion that the Application

for compensation was "merged" in the Settlement Agreement and "binding" on the Petitioners is without authority in law.

It is interesting to note that the far departures from law here are so vast that the District Court has difficulty reciting the facts that appear from the record and opinions below. The District Court states: "After several years of negotiation, a number of major players in the Continental Steel bankruptcy - the estate and trustee ... and the former Continental Steel employees [emphasis added] arrived at a Settlement Agreement ...". App. 5. Of course, what appears on the record is that the lawyers for the Union represented the former employees in negotiating the Settlement Agreement, the same Union that "The bankruptcy court also held that the Union had adequately represented the former employees ..."

App. 7. And, of course, since the lawyers for the Union negotiated the Settlement Agreement, they are the ones to get all of the money to distribute in their absolute discretion without any right, title, or interest in the property existing in the law.

The Petitioners are also concerned about the "adequacy" standard used by the Bankruptcy Court to determine that the Union adequately represented the former employees. In this case, the Union actively participated in breaches of the Labor and Pension Agreements pursuant to having a seat on the employer's Board of Directors and did not ever file a grievance over the breaches before the case was converted to a chapter 7. The Union then hired attorneys to represent the Union "itself" - not the former employees - in the legal proceedings to hide its questionable activity.

And it is well-settled law that labor unions do not represent former employees whose work has ceased with no expectation of return. Allied Chemical, supra.

This is why the District Court opinion had such difficulty in accurately reciting the facts as to who the major players were in the Continental Steel bankruptcy. A negotiated Settlement Agreement between the major players was agreed to and filed in the Bankruptcy Court in January, 1988. The bankruptcy trustee filed a class-action lawsuit without a "case or controversy" between the parties, whose sole purpose was to bind the former employees to the Settlement Agreement. A lawsuit requires a "case or controversy." Fletcher vs. Peck, 6 Cranch 87 ( ). The bankruptcy trustee and the attorneys for the Union worked out a settlement agreement and agreed to file a collusive lawsuit to

bind third parties who did not participate in its negotiation. A case or a controversy must exist for a class-action lawsuit just like any other lawsuit. Booth vs. Prince George's County, 66 F.R.D. 466 (D.C. Md.-1975).

Furthermore, due process requires that a notice of settlement proposal under Rule 23(e) must reasonably apprise members of the class of the terms of settlement and include best available information concerning fees and expenses. Boggess vs. Hogan, 410 F.Supp. 433 (D.C. N.D. Ill.-1975). There was no notice to the former employees of Continental that the Union was representing them in the negotiation and settlement of their rights and interests, notwithstanding the substantial compensation to the Union for this activity. App. 26-28.

The difficulty of the former employees actually "appearing" in the

class-action lawsuit and being heard on the negotiation of their rights and property is illustrated by the litigation over their pension rights. There, the Pension Benefit Guaranty Corporation commenced an adversary proceeding to terminate the former employees' pension plan. The Union purportedly intervened in the adversary proceeding "[i]n an effort to protect its members' pension rights ..." App. 5. However, what the lower courts have failed to take into account is the fact that the sole employer in this instance ceased to exist and all remaining employees were terminated long before the negotiation and settlement agreements in either the related pension case or the bankruptcy litigation. As such, the Union has no statutory authority, nor has any ever been cited, to support that it was representing either Continental Steel

"employees" or "members" of the Union in any forum after the sole employer closed its doors forever on February 25, 1986 pursuant to chapter 7 of the U.S. Bankruptcy Code. Thus, until the issue of how the "Union" - instead of attorneys - represented the former employees after their work had ceased is resolved, there can be no factual holding that the Union "adequately" represented anyone to bind "former employees" to agreements in 1988. Such is the case here over the claims to property of the estate. The class-action lawsuit was filed in January, 1988, and closed in April, 1988, in olympic record time.

CONCLUSION

The far departures from the law for which Petitioners seek review raises extremely important issues concerning the integrity of the judiciary and the public perception of the judiciary. In 1978,

Congress enacted the Bankruptcy Reform Act in part to curb the historic abuse and corruption in the bankruptcy courts. This U.S. Supreme Court promulgated the Bankruptcy Rules of Procedure, complete with concise and plain Advisory Notes, consistent with the Bankruptcy Reform Act of 1978 to implement the provisions and reforms. Here, we have the dismal problems of bankruptcy courts in all their glory - large sums of money going to entities protecting hidden agendas without any statutory authority in the record for this activity.

The Continental Steel Corporation bankruptcy and pension plan termination cases leave the public with the perception that the judiciary hasn't the foggiest idea of what a labor union is and what its limitations are under the U.S. Constitution, National Labor Relations Act and the Bankruptcy Code. Here,

this U.S. Supreme Court held in 1971 that labor unions do not represent retirees and the Agency (NLRB) enforced that holding in this case. However, the lower courts held that the Union adequately represented the "former employees" contrary to this Court's holding and Agency policy affirming said holding as the standard of representation of former employees by a labor union in a court of law once the employer is extinguished.

The far departures from the law and the callousness with the truth in the opinions below in achieving the intended result elaborate the twists and turns that are made to defeat the purposes of the Bankruptcy Code, the National Labor Relations Act and well-settled law to get large sums of money out of bankrupt estates and into the hands of persons who have no right, title or interest to the property found in the laws of the United States or its Constitution.

PRECISE RELIEF REQUESTED

For the foregoing reasons demonstrating far departures from the laws of the United States, Petitioners pray that petition for Writ of Certiorari shall issue and such other and further relief as proper in the premises.

Bob Andrews
Pro Se Petitioner
1561 N. 1050 W. Co. Rd.
Kokomo, Indiana 46901
Tel: (317) 566-3657

I.D. Breeden, Sr.
Pro Se Petitioner
2604 East Boulevard
Kokomo, Indiana 46902
Tel: (317) 452-0968

Phil Kauble
Pro Se Petitioner
1024 South McCann Street
Kokomo, Indiana 46902
Tel: (317) 452-6538

Wade Kauble
Pro Se Petitioner
5713 Treaty Lane
Kokomo, Indiana 46902
Tel: (317) 453-0443

United States Court of Appeals
For the Seventh Circuit
Chicago, Illinois 60604
Submitted July 26, 1996*

Decided August 14, 1996

Before

Hon. Kenneth F. Ripple, Circuit Judge

Hon. Daniel A. Manion, Circuit Judge

Hon. Michael S. Kanne, Circuit Judge

IN THE MATTER OF: CONTINENTAL STEEL CORPORATION, formerly known as PENN-DIXIE STEEL CORPORATION, formerly known as PENN-DIXIE INDUSTRIES, INC., Debtor	Appeal from the United States District Court for the Southern District of Indiana, Indianapolis Division.
APPEAL OF: PHIL KAUBLE, BOB ANDREWS, I.D. BREEDEN, SR., and WADE KAUBLE.	No. 94 C 1485 S. Hugh Dillin, Judge.

No. 95-2227

ORDER

The appellants, four former Continental Steel employees proceeding pro se, challenged a 1994 bankruptcy court ruling that approved a final accounting and

distribution of union employee trust funds. For the reasons stated in the order of the district court affirming the bankruptcy court's ruling, we AFFIRM.

---

* After preliminary examination of the briefs, the court notified the parties that it had tentatively concluded that oral argument would not be helpful to the court in this case. The notice provided that any party might file a "Statement as to Need of Oral Argument." See Fed. R. App. P. 34(a); Cir. R. 34(f). No such statement having been filed, the appeal is submitted on the briefs and the record.

App. 3

United States Court of Appeals
For the Seventh Circuit
Chicago, Illinois 60604

Judgment-Without Oral Argument

Date: August 14, 1996

BEFORE:

Hon. Kenneth F. Ripple, Circuit Judge

Hon. Daniel A. Manion, Circuit Judge

Hon. Michael S. Kanne, Circuit Judge

No. 95-2227

IN THE MATTER OF :
CONTINENTAL STEEL CORPORATION, formerly known as PENN-DIXIE STEEL CORPORATION, formerly known as PENN-DIXIE INDUSTRIES, INCORPORATED,

Debtor

APPEAL OF: PHIL KAUBLE, BOB ANDREWS, I.D. BREEDEN, SR., et al.,

Appeal from the United States District Court for the Southern District of Indiana, Indianapolis, Division No. 94 C 1485, S. Hugh Dillin, Judge

The judgment of the District Court is AFFIRMED, with costs, in accordance with the decision of this court entered on this date.

App. 4

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS, DIVISION

IN RE:	)	
	)	
CONTINENTAL STEEL	)	IP94-1485
CORPORATION f/k/a	)	C-D/F
PENN-DIXIE STEEL	)	
CORPORATION f/k/a	)	Bankruptcy
PENN-DIXIE INDUSTRIES,	)	Case No. IP85
INC.,	)	5415-L-V-7A
Debtor.	)	
	)	
Appeal of:	)	
	)	
Bob Andrews, I.D.	)	
Breeden, Sr., Phil	)	
Kauble, and Wade Kauble.	)	
	)	

ENTRY

On November 25, 1985, Continental Steel filed a Chapter 11 bankruptcy petition. Realizing that its financial condition was too bleak to allow for mere reorganization, Continental Steel closed its Kokomo plant on February 24, 1986 and converted its bankruptcy to a Chapter 7 liquidation the next day. The appellants here - four Kokomoans - worked at the Kokomo plant and were members of the

United Steelworkers of America, Local No. 1054. In an effort to protect its members' pension rights, the Union had intervened in this action about a week before the case was converted to a Chapter 7 liquidation.

After several years of negotiation, a number of major players in the Continental Steel bankruptcy - the estate and Trustee, the U.S. Environmental Protection Agency, the Indiana Department of Environmental Management, the Pension Benefit Guaranty Corporation, and the former Continental Steel employees - arrived at a Settlement Agreement resolving disputes between the parties and dealing with the liquidation and distribution of the debtor's assets.[1] In January 1988, the Trustee moved the bankruptcy court to approve this Agreement and filed an adversary proceeding against a class of former

Continental Steel employees in an effort to bind all the former employees to the Settlement Agreement. All of the former employees - including the appellants here - were given notice of a hearing on a proposed settlement of the adversary proceeding. The hearing was held in April 1988, and Breeden, an appellant here, filed objections to the proposed settlement of the adversary proceeding, which settlement would bind him to the Settlement Agreement in the Chapter 7 case.

The bankruptcy judge overruled the objections to the settlement of the adversary proceeding on the grounds that the Settlement Agreement in the Chapter 7 case was fair and equitable to the

---

[1] Appended to the Settlement Agreement is a Distribution Agreement. For convenience, we'll generally call these agreements collectively the "Settlement Agreement."

members of the class. The bankruptcy court also held that the Union had adequately represented the former employees in resolving claims arising from the collective bargaining agreements between the Union and Continental Steel. On April 20, 1988, the bankruptcy court approved all pertinent provisions of the Settlement Agreement. None of the appellants here timely appealed that decision, and the time for doing so has long since passed. However, it is primarily the terms of the Settlement Agreement and the bankruptcy judge's decision seven years ago overruling objections to the settlement of the adversary proceeding that form the heart of the present appeal.[2]

The Settlement Agreement (and Distribution Agreement appended to it), binding on these appellants by virtue of the settlement of the adversary

proceeding, created the Union Employee Discretionary Trust and provided for detailed duties and responsibilities of the Trust with respect to settlement proceeds placed in the Trust. The proceeds placed in this Trust were designed largely to handle medical claims of the former employees during the pendency of the bankruptcy, and indeed the Trust effectively processed the claims by former employees for several years.

Eventually, pursuant to § 4(q) of the Distribution Agreement, the Trust applied in August 1994 for approval of a final accounting and distribution of the

---

[2] This is not these appellants' first attempt to bring a tardy challenge to the events of Spring 1988. See Kauble v. United Steelworkers of America, No. IP-93-331-C-H/G, slip op. at 1 n. 1 (S.D. Ind. Dec. 27, 1994) (cataloging much of these appellants' journey through the courts).

remaining funds of the Trust. The appellants here filed objections to the application on several grounds. While these appellants did not find fault with the Trust's accounting or with the Trustee's performance of their duties, they objected to the Union receiving any money concomitant to the winding down of the Trust. Indeed they stated several times at the hearing on their objections that their main goal was to block the Union from getting any money from the Trust. The bankruptcy court overruled these objections on September 30, 1994 and approved the application. This ruling recognized the validity of Trust expenses related to processing medical claims and administering the Trust, approved reimbursement of the Union for medical processing expenses the Union had paid before the Trust had taken over that task, and allowed for a final

distribution of funds remaining in the Trust without additional approval of the of the bankruptcy court.

The present appeal apparently seeks to stop the Trust from reimbursing the Union $250,000 the Union had spent on medical claims processing before the Trust was established. The appeal also seeks to reverse the bankruptcy court's approval of an allocation and pre-authorization of $25,000 to be spent on professional fees incurred in winding down the trust. Since these former employees have fought the settlement agreement zealously and creatively for the past seven years, it's not surprising that the appellants here also continue to take issue with a number of issues that should have been appealed long ago. Appellants designate five grounds for reversing the bankruptcy court. As we shall see, these five collapse into three: that reimbursing the

Union is contrary to law, that allocating money for future professional expenses is contrary to law and the settlement agreement, and that the settlement agreement in not binding on the appellants.[3]

Appellant's first argument concerns the reimbursement of the Union from Trust funds. Appellants contend that the bankruptcy court lacked the authority to approve the Trust's reimbursement is contrary to the Bankruptcy Code. The idea here is that the Union is an intervenor and as such may not receive reimbursement from the estate for its professional costs under 11 U.S.C. §330 and Rule 2018. Sure enough, the Advisory Committee Note

---

[3] It is well-known that we review the bankruptcy court's factual findings for clear error, its legal conclusions de novo, and its exercises of discretion for abuse. Mixed questions of law and fact are subject to the clearly erroneous standard of review.

to Bankruptcy Rule 2018 states that "[t]he rules do not provide any right of compensation to or reimbursement of expenses for intervenors." Nonetheless, appellants' first argument is flawed for several reasons. Most importantly, the Union is not receiving funds from the bankruptcy estate, but instead from the Trust. The expenses for which the Union will be reimbursed are explicitly authorized in the settlement agreement. Moreover, the expenses and compensation that the note to Rule 2018 references relate to money spent participating in the bankruptcy proceeding. The expenses for which the Union will be reimbursed relate to medical claims processing - not to any legal or accounting fees incurred solely by intervening in the bankruptcy proceeding. In short, appellants' first argument gives us no reason to overturn the bankruptcy court's determination that

the Trust may properly reimburse the Union for these expenses.

Appellants' second argument is not entirely clear, but apparently appellants feel that the bankruptcy judge contravened 11 U.S.C. §§ 330, 501, 502, and 726 when he approved the application for final accounting, and with it allocation of $25,000 for legal and accounting costs to be incurred in winding down the Trust and filing the Trust's last tax return.

Appellants are bothered 1) that the bankruptcy court authorized future expenditures (the $25,000) without first being presented with precise accounting for the expenses and 2) that the bankruptcy court has largely terminated its oversight in the case - that has made no provisions to guarantee that the distribution approved ever actually occurs. To the extent that appellants'

concern is merely a disagreement with how much money various parties are to receive relative to one another, their problems are with the Settlement Agreement and should have been raised long ago.

To the extent the appellants' are bothered by the possibility that no one is actually going to pay over any money, we note that all of the parties holding the remaining money have duties to clients, to beneficiaries, and to the courts. If it should happen that those holding the money fail to pay money over according to the Distribution Agreement and the bankruptcy court's orders (or pay over too much), and instead as appellants speculate make "love gifts" to their "mothers-in-law," then the appellants might have a claim. The bankruptcy court retained limited jurisdiction over the case to hear future objections to the final disbursement and allowed for the

filing of a final report on the implementation of disbursement if anyone objects to the process. Despite the appellants' worries, we see no basis for reversing the bankruptcy court.

As for the $25,000 allocation, pre-authorized for future professional expenses and taxes, it is clear that a cut-off date for the Trust must be established in order to determine amounts payable to beneficiaries. The Trust will incur costs after this cut-off date. Costs for administering the Trust are payable out of the Trust pursuant to § 4 (m) of the Distribution Agreement. The bankruptcy court did not abuse its discretion by approving allocation and pre-authorizing disbursement of $25,000 for professional fees and taxes incurred in the winding down of the Trust, nor is this approval contrary to law or the settlement agreement. With the

continuing jurisdiction to hear objections to the implementation of disbursement of funds noted above, the bankruptcy court can hear and decide disputes if it appears that the $25,000 is not spent on legitimate activities.

The final argument that appellants advance is meritless and simply reasserts that the Settlement Agreement is not binding on the appellants. As noted, the adversary proceeding - if nothing else did - made it binding, and the appellants did not appeal that. That has been explained to appellants several times and in several prior law suits, and we need not go through it again.

The decision of the bankruptcy court is AFFIRMED.

So ordered this 14th day of April, 1995.

S. Hugh Dillin, Judge

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

IN RE:	)	BANKRUPTCY NO.
	)	85-5415-RWV-7
CONTINENTAL STEEL	)	
CORPORATION, f/k/a	)	
Penn-Dixie Corporation	)	
and Penn-Dixie	)	
Industries, Inc.,	)	
	)	
DEBTOR.	)	

ORDER APPROVING APPLICATION OF TRUSTEE OF UNION EMPLOYEE DISCRETIONARY TRUST FOR APPROVAL OF EXPENSES AND DISTRIBUTION OF REMAINING BALANCE IN TRUST FUND

This matter is before the Court on the "Application of Trustees of Union Employee Discretionary Trust for Approval of Expenses Relating to Processing Medical Claims and Administration of Trust, for Reimbursement to United Steelworkers of America, and for Distribution to Trust Beneficiaries of Remaining Balance in Trust Fund" (the "Application"), filed on August 5, 1993, by Dennis J. Hein, Randy McKay and Sharon

Robinson, as Trustees of Union Employee Discretionary Trust (the "Trust"). Pursuant to notice dated August 16, 1994, given to all creditors and parties in interest herein, this Court held a hearing on the Application on September 29, 1994, at 9:00 a.m.

Objections to the Application were filed by Phil Kauble, Wade Kauble, Bob M. Andrews, and I.D. Breeden Sr., former employees of Continental Steel Corporation, pro se (the "Objections"). The objectors were present in person at the hearing and stated, as the only ground asserted for objection to the relief requested in the Application, that United Steelworkers of America (the "Union"), an intervenor in the bankruptcy case, had no legal authority to enter into agreements settling the claims of the former employees of Continental Steel

who were members of the Union's collective bargaining unit, or to be reimbursed for any expenses the Union incurred in assisting the Trust or the trustees in bankruptcy in administering the allowance and payment of individual employee claims from the settlement funds. No objections were stated, either in written form or orally, to the final report and accounting submitted by the Trust pursuant to Section 4(q) of the "Agreement on Method and Procedure for Distribution of Settlement Agreement Funds to Former Employees of Continental Steel Corporation" (the "Distribution Agreement"), as approved by this Court on April 20, 1988.

The Court, having reviewed the Application and its exhibits and the objections, and being duly advised, finds and concludes that the Objections are

without merit and should be overruled, and that the Application should be approved and the Trust authorized to make final distribution of the funds from its portion of the proceeds of the Settlement Agreement in regard to the employee claims, and to terminate its operations.

The Court now makes the following findings and conclusions:

1. The receipts and distributions of the Trust, and the proposed final distributions as set forth in the Application, were computed pursuant to the provisions of Section 4 of the Distribution Agreement.

2. The Distribution Agreement was approved by this Court on April 20, 1988, following notice to all affected claimants and hearing thereon, by a final order which was not appealed by any of the employee claimants.

3. The trustee in bankruptcy and the Trust sent notice to all former employees entitled to receive final distribution of the remaining funds from the bankruptcy estate under the Settlement Agreement together with proposed final distributions from the Trust, with an opportunity to submit any objection to the Court for consideration.

4. No objection was filed by any of the committees established under the Distribution Agreement to oversee the operations of the Trust or make determinations concerning eligibility and amounts distributable to individual claimants from the funds of the Trust.

5. Proper, timely, adequate and sufficient notice of the Application and the relief requested therein was provided in accordance with Bankruptcy Rule 2002. No further notice of the Application, the

proposed final distribution of the remaining funds of the Trust, or any other matters addressed in the Application, or the entry of this Order, is necessary or required.

6. The receipts, disbursements and proposed final distribution of the funds of the Trust, derived from the Settlement Agreement and the liquidation of debtor's assets, as set forth in the Application and its exhibits, have been or will be made in accordance with the applicable provisions of the Distribution Agreement, which details the method of allocating, calculating and determining the amounts payable and the expenses allowable to the Trust in regard to the allowance and payment of medical claims of the former employees.

It is therefore ORDERED as follows:

I. The Objections filed by Phil Kauble,

Wade Kauble, Bob M. Andrews and I.D. Breeden, Sr., are hereby OVERRULED.

II. The Application, including the accounting of receipts and disbursements of the Trust attached to the Application; the payment or reimbursement of additional trust expenses; the allocation of receipts, disbursement and funds remaining for distributions to Trust beneficiaries, including the Union and the Trust additions to the trustee's Chapter 11 employee distribution fund, conforms to the applicable provisions of the Settlement Agreement and Distribution Agreement and is hereby APPROVED.

III. The Trust is authorized to pay, from its reserve fund set aside in the final accounting for expenses incurred or to be incurred subsequent to the accounting period incident to final accounting and distributions required to

complete administration of the Trust, and from any additional receipts which have accrued to the Trust subsequent to February 28, 1994, any expenses or reimbursements properly chargeable to the Trust, as approved by the Trustees in their discretion, and without further approval of the Court.

IV. Those funds available to the Trust for final expenses need not be paid over to, or approved by, the trustee in bankruptcy.

V. The trustees of the Trust may submit to the Union and representatives of the various employee committees having interest in this matter any appropriate final accounting showing disbursement of all remaining funds in the Trust pursuant to the Application and this Order. The Trust is not required to file a copy of its final accounting with the Court or to

obtain a further order approving disbursement of its remaining funds as authorized in this Order, but may do so in response to any objections submitted in writing by any party in interest. Any objection must be limited solely to the implementation of the payments and distributions as set forth in the Application and as approved in this Order.

VI. There being no just reason for delay, this Order is hereby deemed to constitute a final judgment of this Court.

ENTERED: 9/30/94

Larry Lessen, Judge,
United States Bankruptcy Court

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

IN RE:	)	
	)	
CONTINENTAL STEEL CORPORATION f/k/a PENN-DIXIE STEEL CORPORATION and PENN-DIXIE INDUSTRIES, INC.	)	CASE NO. IP85-5415-V
Debtor.	)	
	)	
N. WAYNE ETTER, Trustee,	)	
	)	
Plaintiff,	)	
	)	ADVERSARY PROCEEDING NO. 88-43
vs.	)	
TIMOTHY J. CHEEK and GLYNDA J. CROUSORE, on Behalf of themselves and all other Former Employees of Continental Steel Corporation,	)	
Defendants.	)	

NOTICE

TO ALL FORMER EMPLOYEES OF CONTINENTAL STEEL CORPORATION:

YOU ARE HEREBY NOTIFIED that N. Wayne Etter, Trustee in Bankruptcy for Continental Steel Corporation, has filed his Application for Approval of and Authority to Enter into Settlement Agreement with United States Environmental Protection Agency, Indiana

Department of Environmental Management, Pension Benefit Guaranty Corporation and all former employees of Continental Steel Corporation ("proposed Settlement"). A copy of said Settlement Agreement is on file with the Court. A summary of the proposed settlement is attached.

YOU ARE FURTHER NOTIFIED that in Adversary Proceeding No. 88-43 by Court Order dated the 23rd day of February, 1988, the Court recognized all former employees of Continental Steel Corporation as a Class as defined by Rule 23 of the Federal Rules of Civil Procedure for the purpose of approval and implementation of the proposed settlement.

YOU ARE FURTHER NOTIFIED that the Court will conduct two hearings with respect to the approval of the proposed settlement:

1. A hearing for the purpose of determining whether the proposed settlement is fair and reasonable for the former employees pursuant to Rule 23 of the Federal Rules of Civil Procedure will be held on April 5, 1988 in Room 322 Federal Courthouse Indianapolis, Indiana, at 2:00 P.M. (Indianapolis time).

2. A hearing for the purpose of determining whether the proposed settlement is in the best interests of the estate and its creditors generally and whether or not the Trustee should be authorized to enter into the proposed settlement will be held on April 12, 1988 in Room 322 Federal Courthouse, Indianapolis, Indiana, at 2:00 P.M.

(Indianapolis time).

YOU ARE ALSO NOTIFIED the any objections with respect to the question of whether or not the proposed settlement is fair and reasonable for the former employees must be filed in writing with the Court on or before the 4th day of April, 1988, with a copy served upon Ancel & Dunlap, P.C., attorneys for the Trustee.

YOU ARE ALSO NOTIFIED that any objections with respect to the question of whether or not the proposed settlement is in the best interests of the estate and creditors generally must be filed in writing with the Court on or before the 7th day of April, 1988, with a copy served upon Ancil & Dunlap, attorneys for the Trustee.

DATED March 9, 1988 .

RICHARD W. VANDIVIER, JUDGE
UNITED STATES BANKRUPTCY COURT

SUMMARY OF SETTLEMENT AGREEMENT

Former employees of Continental Steel Corporation ("Continental"), state and federal environmental authorities, and the Pension Benefit Guaranty Corporation (PBGC") assert secured or priority claims in the bankrpuptcy proceedings against the assets of the Continental bankruptcy estate.

The Settlement Agreement resolves those claims and Pending lawsuits. Under the Settlement Agreement, state and federal environmental agencies will receive $1,500,000.00 and a Chapter 11 administrative claim of $1 Million. The PBGC will receive an assignment of Continental's interest in leased office space in New York City and the profits therefrom and a Chapter 11 administrative in the amount of $200,000.00 subordinate to all other Chapter 11 administrative claims which the Court may approve. Also, the Trustee will dismiss a pending preference suit against the PBGC.

The former employees of Continental will receive $5,500,000.00 in cash and a Chapter 11 claim for $1 million, which will be paid to the extent there are funds available at the conclusion of the bankruptcy administration. These amounts will constitute the total payment from the assets of Continental to former employees for all of their claims. Former employees through their representatives will be required to complete an agreement not to assert additional claims against the bankruptcy estate and the Court will enter an order releasing all their liens

from the assets of Continental.

The estate has approximately $9,700,000.00 in the bank and it is estimated that the estate will receive additional funds approximating $1,650,000.00 upon final sale of all remaining assets, including real estate. The funds remaining after payments under the Settlement Agreement will be used to partially pay claims of other creditors.

In the first distribution to former employees, the $5,500,000.00 will be distributed as follows:

(1) $450,000.00 will be placed in a Medical Fund for payment on claims for medical expenses incurred by employees and retirees before February 25, 1986, payable under Continental's health care plan and not paid by Continental.

(2) $200,000.00 will be paid to a Union Employees Trust which can loan money for payment of additional amounts of approved medical expense claims of union employees or retirees who assign their medical claims to the trust. This trust will assist claimants in settling outstanding bills with health care providers. It may also attempt to recover additional funds from third parties, who may be responsible for payment of medical claims under the Continental health plan, on behalf of claimants who request assistance. Salaried claimants and union claimants who do not assign their claims to the union employee trust will receive their pro rata share on allowed medical claims. Those union persons who receive

a pro rata payment directly will be responsible for resolving and/or settling their medical debts. Any additional funds recovered by the union employee trust from third parties will go first to the repayment of loans made from the $200,000.00 fund and then pro rata among all medical claimants. Those union employees and retirees who have paid all their medical from other funds will be paid directly their pro rata share of the $450,000.00 plus a share of additional money recovered up to the full amount owing under Continental's health plans to the extent sufficient funds exist. Any funds remaining in the trust after settlement of medical claims and payment of designated expenses will be paid pro rata to the Kokomo and Joliet union employees funds and added to the final distribution.

(3) The sum of $2,000.00 per union retiree claimant, up to a maximum of $900,000.00 will be put into a Union Retiree Fund. Kokomo union retirees will receive a paid-up life insurance policy in the face amount of $1,000.00 plus a cash payment up to $1,000.00. Joliet union retirees will receive a cash payment to a maximum of $2,000.00 each.

(4) The sum of $5,000.00 will be paid to settle the claim of Thomas Sigler, the former president of Continental.

(5) The sum of $797,500.00 will be set aside in salaried employees funds consisting of a Salaried Retirees Fund of up to $50,000.00, a Kokomo Salaried Fund of $661,700.00, a Joliet Salaried

Employee Fund of $85,000.00 and the balance to a Salaried Employees Settlement Fund. Former salaried employees will be paid from the respective funds pro rata share of their allowed claims for vacation and severance pay, after payment of specified legal fees and expenses. Retirees will be paid a flat sum which amount will be determined by the number of claims made against that fund, but will not exceed $500.00 per claimant.

(6) A minimum of $3,021,600.00 shall be set aside in the Kokomo Union Employees Fund and $125,900.00 in the Joliet Union Employee Fund. Distribution from these funds will be made on the basis of seniority computed by crediting the employee with one unit for each month of continuous service with Continental accrued as of February 25, 1986. This formula is expected to pay approximately $47.00 per year of service to union employees at Joliet and approximately $200.00 per year of service for the union employees at Kokomo.

(7) From the date of the filing of Trustee's Application to Approve Settlement until the date of distribution by the Trustee, the interest earned on the $5,500,000.00 will be separately accounted for and eventually paid to various employee funds on a basis representing that group's shares. This money will be available to pay expenses and to add to the amounts distributable to employees.

(8) A second and final distribution will

be made at the end of the bankruptcy case of up to $1 Million as payment of the approved Chapter 11 administrative claims to the extent the Trustee has funds available in the estate, to pay the Chapter 11 administrative claims, after paying his Chapter 7 liquidation expenses. In addition, any money remaining in the employee claim settlement funds will be included in this final distribution. The money will be divided among the former employees (other than retirees), salaried and union, in approximate proportion to the share received by each of those groups from the initial $5,500,000.00 settlement fund (excluding medical claims). Salaried retirees received their money in the first distribution. Union retirees will participate in the final distribution to the extent necessary to fund the maximum payments per claimant intended to be paid in the first distribution.

The Trustee shall calculate amounts to be withheld for taxes in relation to the payments made under the Settlement Agreement and withhold the appropriate amount.

The plant guard workers will be treated in a manner similar to that of the Kokomo union employees.

A person will be considered to be a retiree, for purposes of distribution under the Agreement, if the claimant's application for retirement was approved pursuant to a provision of the pension plan under which eligibility was not contingent upon plant shutdown and the

claimant began to receive monthly pension checks no later than February 25, 1986.

If a claimant has died before distribution of the settlement funds, his estate or beneficiaries will be entitled to the amount payable on his claim.

UNITED STATES GOVERNMENT

NATIONAL LABOR RELATIONS BOARD

Washington, D.C. 20570

March 24, 1995

The Honorable Richard G. Lugar
The Honorable Dan Coats
United States Senators
1180 Market Tower
10 West Market Street
Indianapolis, IN 46204-2964

Re: Continental Steel Corporation
Case 25-CA-17996
United Steelworkers of America
Case 25-CB-6582, 25-CB-6650
and 25-CB-7306

Dear Senators Lugar and Coats,

This is in response to your February 14, 1995 inquiry to Chairman Gould. Mr. Joseph Moore, Acting Executive Secretary, referred your inquiry to me for response. Your correspondence attached correspondence from Mr. Phil Kauble of Kokomo, Indiana regarding litigation in bankruptcy court involving Continental Steel Corporation. Specifically, there was correspondence dated November 25 and 28, 1994 from Mr. Kauble raising questions regarding the NLRB's dismissal of charges filed against the United Steelworkers. Mr. Kauble also attached a March 19, 1986 communication from the Chapter 7 Trustee regarding the status of the trustee and argues that this communication establishes that the NLRB

"missed the mark." Since that time, you have received correspondence dated March 16, 1995, from the Regional Director Saundria Bordone responding to similar inquiries.

Hopefully your review of Ms. Bordone's response, as well as the numerous attachments to her letter cataloging previous inquires and responses involving this matter, will resolve the questions raised by Mr. Kauble. The gravamen of Mr. Kauble's correspondence appears to be that charges filed against the Union should not have been dismissed and that actions taken by this Agency are inconsistent with the proceedings in bankruptcy court. Region 25 has thoroughly investigated all charges filed by Mr. Kauble as well as others related to the Continental Steel situation. Mr. Kauble exercised his right to appeal the Region's dismissal of charges filed against the United Steelworkers. In some situations he filed for reconsideration of his appeals. All the Region's dismissals were affirmed by the Agency's Office of Appeals for the reasons set forth in correspondence attached to Ms. Bordone's letter.

To the extent that Mr. Kauble argues that actions taken by the bankruptcy court are inconsistent with the Agency's determinations dismissing charges filed against the United Steelworkers, as noted by Ms. Bordone, we do not see the

inconsistency of which Mr. Kauble writes. The Agency's determinations are based, inter alia, on Supreme Court precedent established in Allied Chemical & Alkali Workers Local 1 v. Pittsburgh Plate Glass Co., 404 U.S. 157 (1971). Simply stated, the National Labor Relations Act designates labor organizations as representatives of employees. In Pittsburgh Plate Glass, the court found because retirees did not come within the meaning of "employee" in the National Labor Relations Act, the NLRB has no jurisdiction over a union's actions in representing retirees. Because Mr. Kauble was a retiree at all pertinent times wherein he alleged that the union has failed to represent him, the Agency has determined that it does not have jurisdiction over those matters and dismissed the charges. If, however, upon review of this correspondence, you have any questions about the Agency's determinations please feel free to contact me or Ms. Bordone and we will attempt to assist you in any way we can.

Thank you for your inquiry. If I can be of any further assistance to you in this or any other matter, please do not hesitate to contact me.

Sincerely,

Fred Feinstein
General Counsel